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STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS

GENERAL LEASE NO. \_\_\_\_\_

between

STATE OF HAWAII

and

\_\_\_\_\_

covering

HAWAIIAN HOME LANDS

situate at

\_\_\_\_\_

Tax Map Key No. \_\_\_\_\_

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STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS

GENERAL LEASE NO. \_\_\_\_\_

THIS INDENTURE OF LEASE, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, but effective \_\_\_\_\_, by and between the State of Hawaii, by its DEPARTMENT OF HAWAIIAN HOME LANDS, whose principal place of business is 1099 Alakea Street, Suite 2000, Honolulu, Hawaii 96813, and post office address is P. O. Box 1879, Honolulu, Hawaii 96805, hereinafter called "LESSOR," and \_\_\_\_\_, a Hawaii corporation/partnership, whose mailing address is \_\_\_\_\_, hereinafter called "LESSEE."

WITNESSETH:

THAT, LESSOR, for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of LESSEE to be kept, observed and performed, does lease to LESSEE, and LESSEE does lease from LESSOR, the premises located at \_\_\_\_\_, Tax Map Key No. \_\_\_\_\_, comprising \_\_\_\_\_ of Hawaiian Home Lands, more particularly described in Exhibit "A", and shown on the map marked Exhibit "B", both attached hereto and made a part hereof.

TO HAVE AND TO HOLD the demised premises unto LESSEE for the term of \_\_\_\_\_ years, commencing on the 1st day of \_\_\_\_\_ up to and including the 30th day of \_\_\_\_\_, unless sooner terminated as hereinafter provided, LESSOR reserving and LESSEE yielding and paying to LESSOR at the office of the Department of Hawaiian Home Lands, Honolulu, Oahu, State of Hawaii, a net annual rental as provided hereinbelow, payable in advance, but not more than one (1) year in advance, without notice or demand, in equal quarterly installments due and payable on or before the first (1st) day of January, April, July and October of each and every year during the term as follows:

1. Annual Rental. For the first ten (10) years, the sum of \_\_\_\_\_ (\$\_\_\_\_\_) per annum. For the eleventh (11th) through the fifteen (15th) years, the net annual rental shall be \_\_\_\_\_ (\$\_\_\_\_\_). For the sixteenth (16th) through the twentieth (20th) years, the net annual rental shall be \_\_\_\_\_ (\$\_\_\_\_\_). For the twenty-first (21st) through the twenty-fifth (25th) years, the net annual rental shall be \_\_\_\_\_ (\$\_\_\_\_\_). The rental shall be due and payable in the manner and on the dates hereinabove stipulated; provided, however, that if the initial period for which the rental is due and payable is less than a full quarterly period, the rental shall be appropriately prorated to reflect the amount due and payable for such shorter initial period.

2. Reopening of base rent. The base rent hereinabove reserved shall be reopened and redetermined at the expiration of the twenty-sixth (26th) and the forty-first (41st) years of the lease term, rent to be stepped-up in five-(5)year intervals.

3. Determination of rent upon reopening of the base rent. The rental for each period to be reopened and redetermined shall be the fair market rental at the time of reopening. At least six (6) months prior to the time of reopening, the fair market rental shall be determined by an appraiser whose services shall be contracted for by LESSOR; provided, that should LESSEE fail to agree upon the fair market rental as determined by LESSOR's appraiser, LESSEE shall promptly appoint its own appraiser and give written notice thereof to LESSOR, and in case LESSEE shall fail to do so within ten (10) days after being advised of the fair market rental as determined by LESSOR's appraiser, LESSOR may apply to any person then sitting as judge of the Circuit Court of the judicial circuit in which the demised premises are located for appointment of a second appraiser, and the two appraisers thus appointed in either manner shall have twenty-one (21) days to resolve any disagreement on the rental determination and settle the reopened rent for the ensuing period. Should both appraisers fail to settle a rental value within this 21-day period, they shall appoint a third appraiser. In case of their failure to do so within ten (10) days, either party may have the third appraiser appointed by the judge and the fair market rental shall be determined by arbitration as provided in Chapter 658, Hawaii Revised Statutes. The decision of the appraisers or a majority of them shall be final, conclusive and binding upon both parties hereto. The appraisers so appointed shall deliver their determination before the sixtieth (60th) day following appointment of the third appraiser, and, in the event they shall fail to do so and the time for delivery of such determination shall not have been extended by mutual agreement of LESSOR and LESSEE, the employment of the appraisers shall immediately terminate and, except as may be approved by LESSOR and LESSEE in the exercise of their sole and absolute discretion with respect thereto, the appraisers shall not be entitled to any payment for services or reimbursement of expenses incurred because of such appointment. In the event the employment of the appraisers shall be so terminated, new appraisers shall be appointed in the manner hereinbefore provided. The LESSEE shall pay for its own appraiser, LESSOR shall pay for its appraiser, and the cost of the third appraiser shall be borne equally by LESSEE and LESSOR. Upon completion of the arbitration procedure, all appraisal reports shall become part of the public record of LESSOR. If the rental for any ensuing period has not been determined prior to the expiration of the preceding rental period, LESSEE shall continue to pay the rent effective for the previous rental period, but LESSEE shall, within thirty (30) days after the new rental has been so determined, make up the deficiency, if any.

## ARTICLE ONE

### RESERVING UNTO THE LESSOR THE FOLLOWING:

1. Minerals and waters.

a. All minerals as hereinafter defined, in, on, or under the premises, and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove such minerals and to occupy and use so much of the surface of the ground as may be required for all purposes

reasonably extending to the mining and removal of such minerals by any means whatsoever, including strip mining. "Minerals," as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under any land, fast or submerged; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and when used in road construction in furtherance of LESSEE'S permitted activities on the demised premises and not for sale to others.

b. All surface waters, ground waters, and water systems, appurtenant to the premises and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of the demised premises as may be required in the exercise of this right reserved.

c. As a condition precedent to the exercise by LESSOR of any rights reserved in this paragraph 1, just compensation shall be paid to LESSEE for any of LESSEE'S improvements taken which amount is to be determined in the manner set forth in paragraph 3, and the rental will be reduced in proportion to the rental value of the premises of which LESSEE is deprived.

2. Prehistoric and historic remains. All prehistoric and historic remains found on the premises.

3. Withdrawal. The right to withdraw all or any portion of the premises for any public purpose (including but not limited to agricultural park development), and also reserves the right to withdraw any portion of the demised premises for other than a public use, which demised premises shall, at the time of withdrawal, constitute an economic unit, provided, that, the portion not withdrawn shall also be an economic unit. The right to withdraw reserved under this paragraph 3 shall be exercised only after a minimum one (1) years prior written notice is given to LESSEE. The LESSEE will be entitled to compensation for those improvements made by LESSEE which have been approved by LESSOR, on any portion of the premises withdrawn, in an amount equal to the proportionate value of LESSEE'S improvements so withdrawn in the proportion that it bears to the unexpired term of the lease; provided, that LESSEE may, in the alternative, remove or relocate its improvements to the remainder of the demised premises occupied by LESSEE. If only a portion of the demised premises is withdrawn, the rental for the remaining portion will be reduced in proportion to the rental value of the premises withdrawn.

## ARTICLE TWO

THE PARTIES HEREIN COVENANT AND AGREE AS FOLLOWS:

1. Payment of rent. That LESSEE shall pay the rent to LESSOR at the times, in the manner and form provided in this lease and at the place specified above, or at any other place LESSOR may from time to time designate, in legal tender of the United States of America.

2. Taxes, assessments, etc. (a) That LESSEE shall pay or cause to be paid, when due, the amount of all taxes, rates, assessments and other outgoings of every description as to which the premises or any part, or any improvements, or LESSOR or LESSEE, are now or may be assessed or become liable by authority of law during the term of this lease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, LESSEE shall be required to pay only those installments, together with interest, which become due and payable during the term. (b) That LESSEE shall reimburse to LESSOR, upon demand, any and all conveyance and transfer taxes payable with respect to this transaction, or with respect to any document to which LESSEE is a party, creating or transferring an interest or an estate in the premises.

3. Utility services. That LESSEE shall pay or caused to be paid all charges, duties, rates and, other outgoings of every description, including water, sewer, gas, refuse collection, relocation of utility poles and lines or any other charges, as to which the premises or any part, or any improvements, or LESSOR or LESSEE may become liable for during the term, whether assessed to or payable by LESSOR or LESSEE.

4. Issuance and relocation of utility easements. (a) That LESSEE may request an easement for utility purposes or relocation of an existing utility easement and, if so approved by LESSOR, LESSEE shall pay all costs related to the issuance and installation of a new utility easement or relocation of an existing utility easement. (b) That LESSOR may issue utility easements or relocate existing utility easements without LESSEE'S approval provided the issuance or relocation thereof does not unreasonably interfere with LESSEE'S use of the premises. In such event, LESSOR shall pay for all costs related to the issuance and installation of a new utility easement or relocation of an existing easement, unless the issuance or relocation is being done at the request of a utility company, in which case the utility company shall pay all the related costs.

5. Sanitation, etc. That LESSEE shall keep the premises and improvements in a strictly clean, sanitary and orderly condition.

6. Waste and unlawful, improper or offensive use of premises. That LESSEE shall not strip or commit, suffer or permit to be committed any waste, nuisance, strip or unlawful, improper or offensive use of the premises, or any part thereof, nor, without the prior written consent of LESSOR, cut down, remove or destroy, or suffer to be cut down, removed or destroyed, any trees now growing on the premises.

7. Compliance with laws. That LESSEE shall, if applicable, comply with the requirements of any municipal, state and federal authorities and observe any municipal ordinances and state and federal statutes, applicable to the premises, now in force or which may be in force.

8. Inspection of premises. That LESSEE will permit LESSOR and its agents, at all reasonable times as to cause as little interference with LESSEE'S use of the premises as is reasonably possible during the lease term, to enter into and upon the premises to inspect and examine the same and

determine the state of repair and condition thereof, including without limitation the right to inspect LESSEE'S records regarding compliance with all applicable rules and regulations.

9. Lessor's approval of improvements. That LESSEE shall not at any time during the term construct, place, maintain and install on the premises any building, structure or improvement of any kind and description except with the prior written consent of LESSOR and upon those conditions LESSOR may impose, unless otherwise provided in the lease. The LESSEE may make nonstructural alterations not exceeding Twenty-Five Thousand Dollars (\$25,000.00) in cumulative costs per alteration during the term of this lease without LESSOR'S consent. LESSEE shall own these improvements until the expiration or termination pursuant to a breach of the lease, at which time the ownership shall automatically be vested in LESSOR.

10. Repairs to improvements. That LESSEE shall at its own expense, keep, repair and maintain all buildings and other improvements now existing or hereafter constructed or installed on the premises in good order, condition and repair, reasonable wear and tear excepted.

11. Liens. That LESSEE will not commit or suffer any act or neglect which results in the premises, any improvement or the leasehold estate of LESSEE becoming subject to any attachment, lien, charge, or encumbrance, except as provided in this lease, and shall indemnify, defend, and hold LESSOR harmless from and against all attachments, liens, charges, and encumbrances and all resulting expenses, including reasonable attorney's fees.

12. Character of use. That LESSEE shall use the demised premises solely for Limited (General) Industrial purposes and such other purpose as is permitted under the current zoning regulations; provided, however, no construction of any residential structures shall be permitted.

13. Assignments, etc. That LESSEE shall not transfer, assign, or permit any other person to occupy or use the premises or any portion, or transfer or assign this lease or any interest, either voluntarily or by operation of law, except by way of devise, bequest or intestate succession, and any transfer or assignment made shall be null and void; provided that with the prior written approval of LESSOR the assignment and transfer of this lease or any portion may be made if (a) LESSEE becomes mentally or physically disabled; (b) extreme economic hardship is demonstrated to the satisfaction of LESSOR; (c) it is to the corporate successor of LESSEE; (d) it contains the personal residence of LESSEE; (e) in the case of commercial, industrial, hotel, resort, apartment, and other business uses, LESSEE was required to put in substantial building improvements; provided, further, that prior to the approval of any assignment of lease, LESSOR shall have the right to review and approve the consideration paid by the assignee and may condition its consent to the assignment of the lease on payment by LESSEE of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee.

14. Subletting. That LESSEE shall not rent or sublet the whole or any part of the premises except to other non-profit organizations sharing common goals and serving similar functions as LESSEE



and with the prior written approval of LESSOR; provided, however, that prior to the approval, LESSOR shall have the right to review and approve the rent to be charged to the proposed sublessee; provided, further, that LESSOR shall have the right to revise, if necessary, the lease rental of the premises based upon the rental rate charged to the proposed sublessee<sup>3</sup>, pursuant to the Sublease Rent Participation Policy adopted by the Hawaiian Homes Commission on April 24, 1987, a copy of which is attached herewith as Exhibit "C", and provided further, that the base rent may not be revised downward. The term of any such sublease shall not exceed the term of this LEASE.

If this paragraph is violated, LESSEE shall relinquish all sublease rents collected from the premises, besides continuing to pay the effective base lease rent to LESSOR, and including all litigation expenses incurred in accordance with paragraph 17, *infra*.

15. Mortgage. That, except as provided in this lease, LESSEE shall not mortgage, hypothecate or pledge the premises or any portion of this lease or any interest without the prior written approval of LESSOR and any such mortgage, hypothecation or pledge without such approval shall be null and void.

16. Indemnity. That LESSEE shall indemnify, defend and hold LESSOR harmless (a) from and against any claims or demands for loss, liability or damage, including claims for property damage, bodily injury or wrongful death, arising out of or resulting from any use, occupancy, maintenance, or enjoyment of the premises, or adjacent sidewalks and roadways in LESSEE'S use or control, including any accident, fire or nuisance, or growing out of or caused by any failure on the part of LESSEE to maintain the premises in a safe condition, or by any act or omission of LESSEE; and (b) from and against all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms, covenants and conditions of this lease or the rules, regulations, ordinances and laws of the federal, state, municipal or county governments.

17. Costs of litigation. That in case LESSOR shall, without any fault on its part, be made a party to any litigation commenced by or against LESSEE (other than condemnation proceedings), LESSEE shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on LESSOR; furthermore, LESSEE shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by LESSOR in enforcing the covenants and agreements of this lease, in recovering possession of the premises or in the collection of delinquent rental, taxes and any and all other charges.

18. Insurance. That LESSEE shall procure and maintain, at its own cost and expense and acceptable to LESSOR, in full force and effect during the period of original construction on the premises with responsible insurance carriers the following insurance:

a. Builder's Risk Insurance. A blanket builder's risk insurance policy on an "all risk" basis in a minimum aggregate amount as required by the lender.

b. Worker's Compensation Insurance. As required by state laws, including and without limitation, employer's liability insurance for all employees of the general contractor performing any work on any improvements being constructed on the premises.

c. Comprehensive General Liability. Against claims for personal injury (including bodily injury and death and property damage). Such insurance shall provide coverage for blanket contractual, explosion, collapse and underground coverage, broad form property damage and personal injury insurance as required by the lender.

Immediately upon completion of construction of improvements, without any lapse in coverage, and at all time thereafter,, LESSEE shall procure and maintain at no cost to LESSOR with responsible insurance carrier the following insurance:

a. Worker's Compensation Insurance. As required by state law, including and without limitation, employer's liability insurance for all employees of any general performing any work on any improvements being constructed on the premises.

b. Comprehensive General Liability Insurance. Against claims for personal injury (including bodily injury and death and property damage). Such insurance shall provide coverage for blanket contractual explosion, collapse and underground coverage, broad form property damage and personal injury insurance with a \$10,000,000 minimum limit per occurrence for combined bodily injury and property damage and in the aggregate where applicable, so long as such insurance is available on reasonable commercial terms. Such insurance shall include to the extent coverage is available on reasonable commercial terms, claims resulting from alleged environmental damage to the soil, water (surface, ground and sea) and air.

c. Fire and Extended Coverage Insurance. The LESSEE shall, at its sole cost, maintain all-risk property insurance covering the building(s) on the Premises, including but not limited to, LESSEE'S leasehold improvements, alterations, additions, trade fixtures and personal property from time to time in, on or upon the Premises and upon every reconstruction, repair and replacement therefor in an amount not less than one hundred percent (100%) of their full replacement cost. This requirement will include Builder's Risk Insurance during any period of construction.

d. Business Interruption Insurance. The LESSEE shall procure and maintain, at its own cost and expense, in full force and effect throughout the entire term of this lease, a business interruption insurance policy to assure rental payment for at least six (6) months in the event of a natural disaster or occurrence beyond the control of LESSEE. The policy shall name LESSOR as the beneficiary of the policy and a certificate so stating shall be forwarded to LESSOR upon each renewal of the policy.

All policies of insurance required to be maintained pursuant to this paragraph 18, "Insurance", covering loss or damage to any of LESSEE'S property shall provide that the insurer is required to provide LESSOR with at least thirty (30) days (or ten (10) days is the case of nonpayment of premiums) prior written notice to cancellation or non-renewal of any policy. The LESSEE will pay all

premiums thereon when due and will from time to time deposit promptly with LESSOR current policies of such insurance or certificates thereof. All public liability and property damage policy shall be in the joint names of and for the mutual and joint benefit and protection of LESSOR, LESSEE, subtenants and mortgagees, as their interests may appear and shall contain a provision that LESSOR, although named as an additional insured, shall not be denied any recovery under the policy(s) for any loss occasioned to it, its servants, agents and employees by reasons of the acts, omissions and/or negligence of LESSEE which recovery would be possible if LESSOR were not named as an additional insured. As often as any such policy shall expire or terminate, LESSEE shall procure and maintain, renewal or additional policies in like manner and to like extent. All public liability, property damage and other casualty policies shall be written as primary policies, not contributing with and not in excess off coverage which LESSOR may carry.

That LESSEE will, at its own expense, at all times during the term of this lease, keep insured all buildings and other improvements erected on the premises in the joint names of LESSOR, LESSEE and the Mortgagee, if any, as their interests may appear, against loss or damage by fire including perils specified in the extended coverage endorsement and in an amount equal to the maximum insurable value thereof, in an insurance company or companies approved by LESSOR, and will pay the premiums at the time and place the same are payable; that the policy or policies of insurance shall be made payable in case of loss to LESSOR, LESSEE and the Mortgagee, if any, as their interests may appear and shall be deposited with the Mortgagee; and that any proceeds derived therefrom in the event of total or partial loss shall be immediately available to, and as soon as reasonably possible, be used by LESSEE for rebuilding, repairing, or otherwise reinstating the same buildings in a good and substantial manner according to the plans and specifications approved in writing by LESSOR or its designated representative; provided, however, that with the approval of LESSOR, LESSEE may surrender this lease and pay the balance owing on any mortgage and LESSEE shall then receive that portion of the proceeds which the unexpired term of this lease at the time of the loss or damage bears to the whole of the term, LESSOR to retain the balance of the proceeds.

The LESSOR shall retain the right at any time to review the coverage, form, and amount of the insurance required by this lease. If, in the opinion of LESSOR, the insurance provisions in this lease do not provide adequate protection for LESSOR, LESSOR may require LESSEE to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The LESSOR'S requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The LESSOR shall notify LESSEE in writing of changes in the insurance requirements and LESSEE shall deposit copies of acceptable insurance policies or certificates thereof, with LESSOR incorporating the changes within thirty (30) days of receipt of notice.

The procuring of the required policy(s) of insurance (i) shall not release or relieve LESSEE of its responsibility, nor be construed to release or relieve LESSEE of its responsibility, under this lease as set forth herein or limit the amount of its liability under this lease, and (ii) shall not be deemed or construed to fulfill the indemnification provisions and requirements of this lease.

19. Performance bond and security deposit. That LESSEE shall, at its own cost and expense, within thirty (30) days from the lease execution date, deposit with LESSOR and thereafter keep in full force and effect during the term of this lease, a good and sufficient surety bond, conditioned upon the full and faithful observance and performance by LESSEE of all of the terms, covenants and conditions of this lease. The amount of the bond shall equal the annual rental under the lease, the initial amount to be established at the time of the auction of the lease, and thereafter shall be adjusted to equal the annual rental determined at each lease rental reopening date and each stepped-up lease rental date. There shall be attached to the bond an affidavit by a surety or sureties pursuant to and in accordance with the provisions contained in Section 78-20, Hawaii Revised Statutes, provided, however, LESSEE may furnish a bond in like amount, conditioned as aforesaid, executed by LESSEE alone as obligor, if, in lieu of any surety or sureties, LESSEE shall also furnish and at all times thereafter keep and maintain on deposit (payable on demand or after such period as LESSOR may stipulate) bonds, stocks or other negotiable securities properly endorsed, or executed and deliver to LESSOR a deed or deed of trust of real property, all of such character as shall be satisfactory to LESSOR and valued in the aggregate at not less than the principal amount of the bond. It is agreed that the value at which any securities may be accepted and at any time thereafter held by LESSOR under the foregoing proviso shall be determined by LESSOR, and that LESSEE may, with the approval of LESSOR, exchange other securities or money for any of the deposited securities, if in the judgment of LESSOR the substitute securities or money shall be at least equal in value to those withdrawn.

It is further agreed that LESSEE may substitute the sureties with a security deposit equal to three months of the established rent pursuant to an action taken by the Hawaiian Homes Commission on June 26, 1990. The security deposit shall be adjusted to equal the three months rental determined at each lease rental reopening date. The deposit will be refunded without interest to LESSEE at the expiration of the lease or assignment of the lease. In the event of non-performance and upon termination of the lease, LESSOR shall have the option to declare the deposit forfeited as liquidated damages or apply it as an offset to amounts owed by LESSEE.

20. Lessor's lien. That LESSOR shall have a lien on all the buildings and other improvements placed on the premises by LESSEE, on all property kept or used on the premises, whether the same is exempt from execution or not and on the rents of all improvements and buildings located on the premises for all LESSOR'S costs, attorneys' fees, rent reserved, for all taxes and assessments paid by LESSOR on behalf of LESSEE, and for the payment of all money provided in this lease to be paid by LESSEE, and such lien shall continue until the amounts due are paid.

21. Improvements. Because time is of the essence, LESSEE shall implement a scheduled program of development. Plans for the scheduled development program shall be submitted to LESSOR for approval within six (6) months from the commencement date of the lease. The LESSEE shall have thirty (30) months from the date of LESSOR'S approval of the plans to complete any necessary construction in order to implement the plans. All construction will be done with new materials and in full compliance with all laws, ordinances, rules and regulations of the federal, state and county governments. The total cost of the building and other improvements shall not be less than \$200,000.00.

22. Landscaping. The primary landscaping material used should be of quality that will serve in enhancing the environment and also serve as a functional part of the improvement. Trees should not only provide shade when mature, but also have character and interesting color as they grow. Shrubbery and ground covers should also provide visual effects in color and texture while providing screening in needed area and also highlighting the architecture of improvement. The landscaping and planting area should be reasonably dispersed throughout the premises. Irrigation should be supplied to assure the livability of the plant material and ease in the maintenance of the site. It is recommended that total landscaping expenditure for the premises should be a minimum of 5% of the total improvement cost.

23. Bond and financial information. That LESSEE will before commencing construction of any improvements on the premises deposit with LESSOR a bond or certificate, in an amount equal to the construction cost of the improvements and in form and with surety satisfactory to LESSOR, guaranteeing the completion of the construction of improvements free and clear of all mechanics' and materialmen's liens, together with such information and evidence as LESSOR may reasonably require to assure that LESSEE is able to and will make all payments required by contract to be made as and when LESSEE is required to do so.

24. Termination. That at the end of or earlier termination of this lease, LESSEE shall, peaceably deliver unto LESSOR possession of the premises, together with all buildings and other improvements of whatever nature or name, now or hereafter erected or placed upon same, in good order and condition, reasonable wear and tear excepted. Furthermore, upon the expiration, termination, and/or revocation of this lease, should LESSEE fail to remove any and all of LESSEE'S personal property from the premises, after notice thereof, LESSOR may remove any and all personal property from the premises and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of LESSEE, and LESSEE does agree to pay all costs and expenses for disposal, removal, or storage of the personal property.

25. Non-warranty. That LESSOR does not warrant the conditions of the premises, as the same is being leased as is.

26. Abandonment by Lessee. That LESSEE agrees that should LESSEE breach this lease and abandon the premises, this lease shall continue in effect so long as LESSOR does not terminate the lease or LESSEE'S right to possession; and LESSOR may enforce all of its rights and remedies under this lease, including the right to recover the rent as it becomes due under this lease; and further, that LESSOR need not mitigate its damages in the event LESSEE abandons the premises and LESSEE hereby expressly agrees to make LESSOR whole in accordance with the terms of this lease.

27. Fees, processing/documentation. That LESSEE agrees to pay to LESSOR, a reasonable fee for LESSOR'S processing of consents and assignments and providing documents required or authorized by the terms, covenants and conditions of this lease. The amount of the processing fee and documentation fee shall be determined by LESSOR, provided the fee be not less than seventy-five dollars (\$75.00) nor more than one hundred fifty dollars (\$150.00).

### ARTICLE THREE

IT IS HEREBY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. Mortgage. That upon due application and with the written consent of LESSOR, LESSEE may mortgage this lease, or any interest, or create a security interest in the leasehold land. If the mortgage or security interest is to a recognized lending institution in either the State of Hawaii or elsewhere in the United States, the consent may extend to foreclosure and sale of LESSEE'S interest at the foreclosure to any purchaser, including the mortgagee, without regard to whether or not the purchaser is qualified to lease, own or otherwise acquire and hold the land or any interest. The interest of the mortgagee or holder shall be freely assignable. The term "holder" shall include an insurer or guarantor of the obligation or condition of the mortgage, including the Department of Housing and Urban Development through the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, Farmers Home Administration, or any other federal agency and their respective successors and assigns or any lending institution authorized to do business in the State of Hawaii or elsewhere in the United States; provided, that the consent to mortgage to a non-governmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of these federal agencies.

2. Breach. That time is of the essence of this agreement and if LESSEE shall become bankrupt, or shall abandon the premises, or if this lease and the premises shall be attached or taken by operation of law, or if any assignment is made of LESSEE'S property for the benefit of creditors, or if LESSEE shall fail to observe and perform any of the terms, covenants and conditions contained in this lease and on its part to be observed and performed, LESSOR shall deliver a written notice of the breach or default by service, as provided by Section 634-35, or 634-36, Hawaii Revised Statutes, or by registered mail, or certified mail to LESSEE at its last known address, and to each mortgagee or holder of record having a security interest in the premises, making demand upon LESSEE to cure or remedy the breach or default within sixty (60) days from the date of receipt of the notice; provided that where the breach involves a failure to make timely rental payments pursuant to the lease, the written notice shall include a demand upon LESSEE to cure the breach within less than sixty (60) days, but not less than five (5) business days, after receipt of the notice. Upon failure of LESSEE to cure or remedy the breach or default within the time period provided herein or within such additional period as LESSOR may allow for good cause, LESSOR may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter the premises or any part, and upon or without such entry, at its option, terminate this lease without prejudice to any other remedy or right of action for arrearages of rent and interest at the legal rate pursuant to Section 478, Hawaii Revised Statutes, or for any preceding or other breach of contract; and in the event of termination, all buildings and improvements shall remain and become the property of LESSOR; furthermore, LESSOR shall retain all rent paid in advance as damages.

3. Rights of holder of record of a security interest. In the event LESSOR seeks to forfeit the privilege, interest, or estate created by this lease, each recorded holder of a security interest may, at

its option, cure or remedy the default or breach, if the same can be cured or remedied by the payment of money or, if such is not the case, by performing or undertake in writing to perform all the terms, covenants and conditions contained in the lease on LESSEE'S part to be performed, capable of performance by the holder, as determined by LESSOR, within the time period provided in Section 171-20, Hawaii Revised Statutes, or within the additional period as LESSOR may allow for good cause and add the cost to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, LESSOR may: (a) pay to the holder from any monies at its disposal the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder or if ownership of the privilege, interest or estate shall have vested in the holder by way of foreclosure, or action in lieu thereof, LESSOR shall be entitled to the conveyance of the privilege, interest or estate upon payment to the holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest or estate subsequent to the foreclosure; or (b) if the property cannot be reasonably reassigned without loss to the State, then terminate the outstanding privilege, interest or estate without prejudice to any other right or remedy for arrearages of rent or for any preceding or other breach or default and use its best efforts to redispense of the affected land to a qualified and responsible person free and clear of the mortgage and the debt secured; provided that a reasonable delay by LESSOR in instituting or prosecuting its rights or remedies under this provision and Section 171-21 of the Hawaii Revised Statutes shall not operate as a waiver of these right or to deprive it of the remedy when it may still otherwise hope to resolve the problems created by the breach or default involved. Section 171-19, Hawaii Revised Statutes to the contrary notwithstanding, the proceeds of any redispense under the terms of this provision and Section 171-21, Hawaii Revised Statutes, shall be applied; first, to reimburse LESSOR for costs and expenses in connection with the redispense; second, to discharge in full any unpaid purchase price or other indebtedness owing LESSOR in connection with the privilege, interest or estate terminated; third, to the mortgagee to the extent of the value received by the State upon redispense which exceeds the fair market lease value of the land as previously determined by the State's appraiser; and fourth, to the owner of the privilege, interest, or estate.

4. Condemnation. That, if at any time, during the term of this lease, any portion of the premises should be condemned, or required for public purposes by the State of Hawaii, or any county or city and county, or any other governmental agency or subdivision, the rental shall be reduced in proportion to the value of the portion of the premises condemned. The LESSEE shall be entitled to receive from the condemning authority (a) the value of growing crops, if any, which LESSEE is not permitted to harvest and (b) the proportionate value of LESSEE'S permanent improvements so taken in the proportion that it bears to the unexpired term of the lease; provided, that LESSEE may, in the alternative, remove and relocate its improvements to the remainder of the demised premises occupied by LESSEE. The LESSEE shall not by reason of the condemnation be entitled to any claim against LESSOR for condemnation or indemnity for leasehold interest and all compensation payable or to be paid for or on account of the leasehold interest by reason of the condemnation shall be payable to and be the sole property of LESSOR. The foregoing rights of LESSEE shall not be exclusive of any other to which LESSEE may be entitled by law. Where the portion taken renders the remainder unsuitable for the use or uses for which the land was leased, LESSEE shall have the option to surrender this lease

and be discharged and relieved from any further liability therefor; provided, that LESSEE may remove the permanent improvements constructed, erected and placed by it within any reasonable period allowed by LESSOR.

5. Right to enter. That LESSOR and agents or representatives shall have the right to enter and cross any portion of the premises for the purpose of performing any public or official duties; provided, however, in the exercise of these rights, LESSOR shall not interfere unreasonably with LESSEE or LESSEE'S use and enjoyment of the premises.

6. Inspection by prospective bidders. That LESSOR shall have the right to authorize any person or persons to enter upon and inspect the premises at all reasonable times following a published notice for its proposed disposition for purposes of informing and apprising that person or persons of the condition of the premises prior to the proposed disposition; provided, however, that any entry and inspection shall be conducted during reasonable hours after notice to enter is first given to LESSEE, and shall, if LESSEE so requires, be made in the company of LESSEE or designated agents of LESSEE; provided, further, that no such authorization shall be given more than two years before the expiration or termination of this lease.

7. Acceptance of rent not a waiver. That the acceptance of rent by LESSOR shall not be deemed a waiver of any breach by LESSEE of any term, covenant or condition of this lease, nor of LESSOR'S right to re-entry for breach of covenant, nor of LESSOR'S right to declare and enforce a forfeiture for any such breach, and the failure of LESSOR to insist upon strict performance of any such term, covenant or condition, or to exercise any option conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition or option.

8. Extension of time. That notwithstanding any provision contained in this lease when applicable, LESSOR may for good cause shown, allow additional time beyond the time or times specified in the lease for LESSEE to comply, observe and perform any of the lease terms, covenants and conditions.

9. Justification of sureties. Any bonds required by this lease shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business in the State of Hawaii, or by not less than two personal sureties, corporate or individual, for which justifications shall be filed as provided in Section 78-20, Hawaii Revised Statutes; provided, however, LESSEE may furnish a bond in like amount, conditioned as aforesaid, executed by it alone as obligor, if, in lieu of any surety or sureties, it shall also furnish and at all times thereafter keep and maintain on deposit with LESSOR security in certified checks, certificates of deposit (payable on demand or after such period as LESSOR may stipulate), bonds, stocks or other negotiable securities properly endorsed, or execute and deliver to LESSOR a deed or deeds of trust of real property, all of such character as shall be satisfactory to LESSOR and valued in the aggregate at not less than the principal amount of the bond. It is agreed that the value at which any securities may be accepted and at any time thereafter held by LESSOR under the foregoing proviso shall be determined by LESSOR, and that LESSEE may, with the approval of LESSOR, exchange other securities or money for any of the deposited securities if in



the judgment of LESSOR the substitute securities or money shall be at least equal in value to those withdrawn. It is further agreed that substitution of sureties or the substitution of a deposit of security for the obligation of a surety or sureties may be made by LESSEE, but only upon the written consent of LESSOR and that until such consent be granted, which shall be discretionary with LESSOR, no surety shall be released or relieved from any obligation.

10. Waiver, modification, reimposition of bond provision. Upon substantial compliance by LESSEE of the terms, covenants and conditions herein contained on its part to be observed or performed, LESSOR at its discretion may waive or suspend the performance bond and/or improvement bond requirements or may modify the same by reducing the amount; provided, however, that LESSOR reserves the right to reactivate or reimpose the bond and/or bonds in and to their original tenor and form at any time throughout the term of this lease.

11. Quiet enjoyment. That LESSOR covenants and agrees with LESSEE that upon payment of the rent at the times and in the manner provided and the observance and performance of these terms, covenants and conditions on the part of LESSEE to be observed and performed, LESSEE shall and may have, hold, possess and enjoy the premises for the term of the lease, without hindrance or interruption by LESSOR or any other person or persons lawfully claiming by, through or under it.

12. Interest, costs and fees. The interest rate on any and all unpaid or delinquent rentals shall be at one percent (1%) per month, plus a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) per month for each month of delinquency.

In case of any default by LESSEE in the performance of the terms, covenants and conditions herein contained, LESSEE shall pay to LESSOR any and all costs incurred in connection with the default, including reasonable attorneys' fees. In the event that any indebtedness arising hereunder is placed in the hands of a collector or an attorney for collection, or suit is instituted for collection, LESSEE shall pay, in addition to the indebtedness, reasonable collector's and/or attorneys' fees, together with all costs.

13. Hazardous materials. LESSEE shall not cause or permit the escape, disposal or release of any hazardous material. LESSEE shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought into the premises any such materials except to use in the ordinary course of LESSEE'S business, and then only after written notice is given to LESSOR of the identity of such materials and upon LESSOR'S sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by LESSEE, then LESSEE shall be responsible for the reasonable costs thereof. In addition, LESSEE shall execute affidavits, representations and the like from time to time at LESSOR'S request concerning LESSEE'S best knowledge and belief regarding the presence of hazardous materials on the premises placed or released by LESSEE.

LESSEE agrees to indemnify, defend, and hold LESSOR harmless, from any damages and claims resulting from the release of hazardous materials on the premises occurring while LESSEE is in possession or elsewhere if caused by LESSEE or persons acting under LESSEE. These covenants shall survive the expiration or earlier termination of the lease.

For the purpose of this lease, the term “hazardous material” as used herein shall include any substance, waste or material designated as hazardous or toxic or radioactive or other similar term by any present or future federal, state or local statute, regulation or ordinance, as amended from time to time, including but not limited to the following statutes and regulations promulgated pursuant to them:

Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 et seq. (“RCRA”)  
Comprehensive Environmental Response, Compensation, and Liability Act of 1980  
 (“CERCLA”) amended by Superfund Amendments and Reauthorization Act of 1986  
 (“SARA”), 42 U.S.C. 9601 et seq.  
Clean Air Act, 42 U.S.C. Sections 7401 et seq.  
Clean Water Act of 1977, 33 U.S.C. 1251 et seq.  
Pesticide Act of 1978, 7 U.S.C. 13 et seq.  
Toxic Substances Control Act (“TSCA”), 15 U.S.C. 2601 et seq.  
Safe Drinking Water Act, 42 U.S.C. 300(f) et seq.  
Hazardous Materials Transportation Act, 49 U.S.C. 1801 et seq.  
Chapter 128D, Hawaii Revised Statutes  
Chapters 342B through 342N, Hawaii Revised Statutes,

and including but not limited to petroleum, petroleum based substances, asbestos, polychlorinated-biphenyls (“PCBs”), formaldehyde, and also including any substance designated by federal, state or local regulation, now or in the future, as presenting a risk to human health or the environment.

14. Underground Storage Tank (UST). An UST is any tank, including underground piping connected to the tank, that has at least ten percent (10%) of its volume underground and is used for the storage of certain regulated substances like petroleum or certain hazardous chemical.

Prior special approval from LESSOR is required for the installation of such facility. All USTs are considered trade fixtures and are to be removed upon termination or expiration of the lease by LESSEE. Two (2) years prior to expiration of lease term, LESSEE shall initiate testing of the surrounding ground for possible contamination and conduct clean up procedure, if necessary, in accordance with the State of Hawaii, Department of Health regulations.

15. Hawaii Law. This lease shall be construed, interpreted, and governed by the laws of the State of Hawaii.

16. Exhibits – Incorporation in lease. All exhibits referred to are attached to this lease and hereby are deemed incorporated by reference.

17. Partial invalidity. If any term, provision, covenant or condition of this lease should be held to be invalid, void or unenforceable, the remainder of this lease shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

18. Definitions. As used herein, unless clearly repugnant to the context:

- (a) “Chairman” shall mean the Chairman of the Department of Hawaiian Home Lands of the State of Hawaii or his/her successor.
- (b) “Holder of record of a security interest” is a person who is the owner or possessor of a security interest in the land leased and who has filed with the Department of Hawaiian Home Lands and with the Bureau of Conveyances of the State of Hawaii a copy of this interest.
- (c) “LESSEE” shall mean and include LESSEE herein, its heirs, executors, administrators, successors or permitted assigns.
- (d) “Premises” shall mean the land leased and all buildings and improvements now or hereinafter constructed and installed on the land leased.
- (e) The use of any gender shall include all genders, and if there be more than one lessee, then all words used in the singular shall extend to and include the plural.
- (f) “Economic unit” shall mean the prevailing minimum lot size required under the County Zoning or Land Use Code.
- (g) The paragraph headings throughout this lease are for the convenience of LESSOR and LESSEE and are not intended to construe the intent or meaning of any of the provisions thereof.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day and year first above written.

APPROVED BY THE HHC  
AT ITS MEETING HELD ON

\_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General  
State of Hawaii

State of Hawaii  
DEPARTMENT OF HAWAIIAN HOME LANDS

By \_\_\_\_\_

Raynard C. Soon, Chairman  
Hawaiian Homes Commission

LESSOR

By \_\_\_\_\_

LESSEE

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Notary Public, \_\_\_\_\_  
Judicial Circuit, State of Hawaii  
My commission expires: \_\_\_\_\_